

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 KEVIN MACHO,

12 Plaintiff,

13 v.

14 FIRST NATIONAL INSURANCE  
15 COMPANY OF AMERICA,

16 Defendant.  
17

CASE NO. 3:17-cv-05562-RJB

ORDER DENYING WITHOUT  
PREJUDICE PLAINTIFF'S  
MOTION FOR REMAND

18 THIS MATTER comes before the Court on Plaintiff's Motion for Remand (Dkt. 7). The  
19 Court has considered Defendant First National Insurance Company's Response (Dkt. 10), the  
20 Complaint (Dkt. 1-2), and the remainder of the file herein. Plaintiff did not file a Reply.

21 Plaintiff seeks remand on the basis that the Court lacks original jurisdiction. Defendant  
22 removed the case from Clark County Superior Court based on alleged diversity jurisdiction, *see*  
23 28 U.S.C. § 1332, and Plaintiff argues that the amount in controversy does not exceed \$75,000.  
24

1 **BACKGROUND**

2 The Complaint centers on allegations that Defendant acted in bad faith in another lawsuit,  
3 an uninsured motorist case in which Plaintiff alleges that he is entitled to insurance benefits. Dkt.  
4 1. Plaintiff filed the present case in Clark County Superior Court on June 22, 2017, and the case  
5 was timely removed by Defendant on July 21, 2017. Dkt. 1.

6 The Complaint is accompanied by a Notice of Removal, which represents that diversity  
7 jurisdiction is proper because Defendant is a citizen of a state other than Washington, Plaintiff is  
8 a resident of Clark County, Washington, and the amount in controversy exceeds \$75,000. Dkt. 2  
9 at ¶¶4-7. *See* 28 U.S.C. § 1332. In support of the amount of controversy alleged, the Notice of  
10 Removal alleges that Defendant made Plaintiff a written offer of \$69,277.13 on June 23, 2017;  
11 that Plaintiff rejected the offer because it was too low; and that the Complaint seeks attorney fees  
12 and treble damages under the Consumer Protection Act (CPA) and the Insurance Fair Conduct  
13 Act (IFCA). *Id.* at ¶7.

14 The Complaint alleges that Defendant “has violated the Consumer Protection Act, RCW  
15 19.86.020, *et seq.* . . . as well as administrative code passed under authority of the Insurance Fair  
16 Conduct Act, RCW 48.30.15, *et seq.* Dkt. 1-2 at ¶77. Relatedly, the Complaint alleges a range of  
17 conduct by Defendant that, if true, could violate IFCA and the CPA. *See generally*, Dkt. 1-2 at  
18 ¶76.

19 **STANDARDS GOVERNING MOTION FOR REMAND**

20 28 U.S.C. § 1441, provides that “any civil action brought in a State court of which the  
21 district courts of the United States have original jurisdiction, may be removed by the defendant  
22 or defendants, to the district court of the United States for any district . . . where such action is  
23 pending.” 28 U.S.C. § 1441(a). District courts have “original jurisdiction,” among other reasons,  
24

1 where there is complete diversity between the parties and the amount in controversy exceeds  
2 \$75,000 at the time of removal. 28 U.S.C. § 1332(a). Where removal is based on diversity  
3 jurisdiction, the removing defendant must show the sufficiency of the amount in controversy by  
4 a preponderance of the evidence. 28 U.S.C. § 1446(c)(2). Removal statutes are construed  
5 restrictively, and any doubts about removability are resolved in favor of remanding the case to  
6 state court. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

7 On a motion for remand, the removing defendant faces a strong presumption against  
8 removal, and bears the burden of establishing that removal was proper by a preponderance of  
9 evidence. *Gaus*, 980 F.2d at 567; *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04  
10 (9th Cir. 1996). Conclusory allegations by the defendant will not suffice to overcome the  
11 traditional presumption against removal. *Rodgers v. Central Locating Service, Ltd.*, 412 F.  
12 Supp.2d 1171, 1175 (W.D. Wash. 2006); *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d  
13 373, 375 (9th Cir. 1997). Instead, the courts may look beyond pleadings and consider other  
14 summary judgment type evidence relevant to the amount in controversy, tested as of the time of  
15 removal. *Kroske v. U.S. BankCorp.*, 432 F.3d 976, 980 (9th Cir. 2005); *Valdez v. Allstate Ins.*  
16 *Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004).

### 17 DISCUSSION

18 The present motion for remand is brought by Plaintiff, who does not make a specific  
19 showing about the amount in controversy. *See generally*, Dkt. 7. Instead, Plaintiff argues that  
20 Defendant cannot meet its burden to show the amount in controversy, where Defendant's  
21 assessment is flawed and based on incorrect assumptions. Dkt. 7 at 2-5. Because the Complaint  
22 is silent as to the amount in controversy, Plaintiff argues, Defendant has relied on its settlement  
23 offer to Plaintiff in the amount of \$69,277.13 to make its showing. However, Plaintiff explains,

1 that offer was made to resolve the underlying uninsured motorist case, not this case. Dkt. 7 at 2-  
2 5. Plaintiff also rejects any calculation that would rely on including treble damages under IFCA.  
3 According to Plaintiff, IFCA is raised only as a theory of liability for the CPA claims and is not  
4 alleged as a separate claim. *Id.* at 3. *See* Dkt. 1-2 at ¶77. Plaintiff also notes, parenthetically, that  
5 he could not have alleged IFCA violations, because he does not allege that Defendant denied  
6 coverage, which is a prerequisite to an IFCA violation. *Id.*

7 Defendant argues that even if the Complaint only alleges CPA violations, not IFCA  
8 violations, the amount in controversy is satisfied because each CPA violation, if proved, could  
9 include up to \$25,000 in treble liability alone, and there are sixteen discretely alleged CPA  
10 violations, plus attorneys' fees to be included in the calculation. Dkt. 10 at 2, 3, 7, 8. Defendant  
11 also notes that Plaintiff has not submitted a declaration or evidence to contradict Defendant's  
12 submission and argues that Plaintiff's arguments misinterpret the applicable law. *Id.* at 5, 6.

13 The Court finds that Defendant has shown by a preponderance of the evidence an amount  
14 in controversy that exceeds \$75,000, so original jurisdiction under § 1332 is proper. From the  
15 face of the Complaint, multiple bases for CPA claims are apparent. *See* Dkt. 1-2 at ¶76 (failure to  
16 make a timely and reasonable investigation; failure to make prompt, fair settlement; failure to  
17 timely acknowledge material communications; engaged in bad faith). If Plaintiff prevails on just  
18 three of the multiple CPA claims alleged, and those claims are trebled to their maximum of  
19 \$25,000 each, the amount in controversy is easily exceeded. If Plaintiff's counsel is awarded  
20 attorneys' fees, *see Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007), the  
21 amount will further increase. The Court's calculation does not rely on the \$69,277.13 settlement  
22 offer by Defendant, although the offer does support an inference that CPA damages, if awarded,  
23 would be more than nominal in amount. The Court's calculation also does not rely on trebled  
24

1 IFCA violations, although the Complaint can reasonably be interpreted to allege them. *See* Dkt.  
2 1-2 at ¶77.

3 Plaintiff's motion for remand should be denied without prejudice. Dismissal or remand  
4 may be warranted should it become clear, through the course of motions or otherwise, that the  
5 amount in controversy is less than \$75,000. Based on the showings of the parties, however, the  
6 Court concludes at this juncture that it has original jurisdiction under § 1332.

7 \* \* \*

8 THEREFORE, Plaintiff's Motion for Remand (Dkt. 7) is DENIED WITHOUT  
9 PREJUDICE.

10 IT IS SO ORDERED.

11 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
12 to any party appearing pro se at said party's last known address.

13 Dated this 29<sup>th</sup> day of August, 2017.

14 

15  
16 ROBERT J. BRYAN  
United States District Judge